IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO 9282 OF 1998

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

Champakbhai Paresottambhai Patel
VERSUS
The State of Gujarat & Otrs.

Appearance:
MR DK NAKRANI for Petitioner
MS MANISHA LAVKUMAR for Respondent No.1 and 2
MR MAHESH BHAVSAR for MR UN SHASTRI for
Respondent No.3
MR C.B. DASTOOR for Respondent No.4

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision : 31/08/2000

C.A.V. JUDGEMENT

1. Heard the learned counsel for the parties.

2. This petition clearly shows how an owner of the vehicle makes an attempt to evade the tax liability. The petitioner is, admittedly, a registered owner of the vehicle in dispute. To certain extent or what I may say to a substantial extent, the Officers of the Transport Department are also equally responsible for non-recovery of the tax from the registered owner of a vehicle or from the person who is in possession or control of the vehicle, etc.

3. The tax dues of this vehicle, as per the reply filed by the respondent, is to the tune of Rs.2,87,500/excluding the penalty. The facts of the case go to show that the tax of this vehicle was due since long. By passing of time and looking to the registration number of the vehicle, it appears to be an old vehicle and it would have lost almost appreciation in the value. The value of the vehicle now appears to be that of scrap. It is a different matter that as per the case of the respondents, the vehicle is not traceable. What it is stated is true then, the Officers of the Department are responsible to make it untraceable. Where timely steps would have been taken and for which they have been clothed with sufficient wide powers of seizure of the vehicle, this situation would not have been created. So, it is the creation of the Officers of the department.

4. Here are three persons concerned as per the case of the petitioner disown their liability of the tax. The petitioner disown his liability of payment of the tax on the ground that he sold the vehicle way back in the year 1993 to the respondent no.3. He further states that respondent no.3 in his turn sold this vehicle to the respondent no.4. It is not the stage where it is necessary to go on all these vital aspects as raised by the petitioner. The petitioner continues to be a registered owner of the vehicle in the record of the Regional Transport Office concerned and even on day, his liability to pay the taxes does not come to an end merely on what he asserted in the petition. His liability to pay tax for this vehicle may come to an end only from the date on which the vehicle is transferred in the name of other person in R.T.O. record, and that is not the case here. The taxation authorities are not bound by the so-called private transaction of the sale of this vehicle by the petitioner to third person.

5. The respondents are perfectly legal and justified in their approach to proceed with the recovery of this

tax dues against the petitioner. Section-8 of the Bombay Motor Vehicle Taxation Act is very clear and it makes all, the registered owner, the person who is in possession and control of the vehicle, to pay the tax liability. This is totally a misconception of law that the petitioner, by this alleged transfer of the vehicle to respondent no.3, is relieved of his liability to pay the taxes of the vehicle. So long as in the record of the Department, the petitioner continues as a registered owner of the vehicle, his liability to pay tax does not come to an end and all dues of the taxes of the vehicle legitimately and legally can be recovered from him by the Department. It is unfortunate that officers of the Department have not taken timely action for recovery of tax dues, otherwise this much of heavy amount of tax dues would not have been accumulated. There appears to be collusion and connivance between the petitioner and the Officers of the Department and as a result of which later permitted the vehicle to ply on the road without payment of tax and only after heavy dues of tax accumulated, they proceed to take action for recovery thereof. Meaning thereby, as a result of this approach of the officers, they make it difficult for the Government to recover the dues of tax by seizure and auction of the vehicle. To recover the dues of tax from the personal movable or immovable properties of the defaulter, is not easy in every case. This mode of recovery of the dues of tax gives manifold legal opportunities to the defaulter to delay the recovery thereof. The Officer of the Department are to take all care and caution immediately on the tax becomes due to seize the vehicle, that is, not to permit the vehicle to ply on the road. Within time given in notice, tax is not paid by the owner, the vehicle is to be put to auction. This vigil of the officers of the Department will serve many ways interest of the revenue i.e public interest; (i) immediate recovery of tax; (ii) vehicle may be available, traceable and in reach of the Department; (iii) the vehicle itself would have been potential one to fetch price sufficient to wipe out the tax liability, on auction of it; (iv) officers need not to waste their valuable time in recovery of this tax and defend litigation in Court.

6. Be that as it may, section-8 of the Act is very clear. Merely on filing of the application for transfer of the vehicle by the petitioner from his name in the name of other person, he does not relieve of his liability to pay the tax. So long the vehicle is not transferred, he is liable to pay the due tax of the vehicle. An application for transfer of the vehicle has been filed by the petitioner, but, it was a defective

application on which the respondents have rightly not proceeded. The petitioner is making all attempt to pass his this liability of the payment of due tax of the vehicle upon the respondent Nos.3 and 4 on the ground he has sold the vehicle to them. It may be a matter in between the petitioner and respondent Nos.3 and 4, but, the Transport Department was not a party to these transaction. The sell or agreement or dealing, even if it is there, is not winding on the Transport Department. The Transport Department has not relieved of the petitioner from his liability to clear dues of the tax of this vehicle. In such matters, the principle liability to pay tax of the vehicle continues to be of the registered owner and it is his legal duty to pay the tax. The petitioner can recover this amount of the tax paid by him from the person to whom he alleged to have sold the vehicle by filing a suit or by taking any other legal remedy available, but only on this ground, he cannot claim immunity from payment of the dues of the tax of the vehicle.

7. The reply to the Special Civil Application has been filed and from there, I find that as on 19th August, 1998, the tax liability was of Rs.2,87,500/- and penalty was of Rs.71,875/-. The petitioner knows well the law which is clearly borne out from the fact that he filed the suit, being Suit No.39 of 1998, before the Court of Civil Judge (S.D), Nadiad for a declaration that the respondent Nos.3 and 4 are responsible for the payment of the dues of tax of this vehicle. The respondents have not given out in the reply, whether they were parties to the suit or not. However, it is not in dispute that this suit has been withdrawn by the petitioner unconditionally. The petitioner, thereafter, filed Special Civil Application No.4130 of 1998 which was also came to be withdrawn and then, this petition has been filed. In rejoinder to the reply, the petitioner has not controverted this fact that earlier, he has filed a Special Civil Application No.4830 of 1998. The petitioner filed this petition in the Court on 5/11/1998. The suit has been withdrawn by the petitioner on 31st August, 1998, i.e. before the filing of this Special Civil Application.

8. In the Special Civil Application, the petitioner has not given out the fact regarding filing of the suit by him against respondent Nos.3 and 4 though he has made reference to the criminal complaints which he had lodged against respondent Nos.3 and 4. This is clearly a case of deliberate suppression of the material and important fact from this Court by the petitioner. The suit filed

for declaration by the petitioner against the respondent Nos.3 and 4 that they are liable to make the payment of the tax, has been withdrawn and it concluded the matter and the liability to pay the dues of tax remains of the petitioner only. This was a material and relevant fact in the matter and suppression, thereof, is fatal to maintainability of this Special Civil Application. The petitioner has not furnished any explanation whatsoever for non disclosure of this material and important fact. The petitioner felt satisfied stating that he has not suppressed any material fact. The petitioner has not come up with clean hands before this Court and only on this ground, also, this petition deserves to be dismissed.

9. On 28th January 1999, the petitioner was directed to produce on record, the complete details of the movable and immoveable properties which he possess. This order has also not been complied with by the petitioner. Once, this Court has given direction for production of these details, it is his duty to comply with the said order. The non-compliance of this order of the Court also disentitles the petitioner from any relief to be granted by the Court to him under its extraordinary equitable jurisdiction. Non-compliance of the order of the Court by a party is a serious matter and it is to be taken there from that the petitioner is not fairly acting in the Court. This conduct of the petitioner is very relevant while considering the case for grant of relief to him by the Court under its extraordinary equitable jurisdiction. Non compliance of the order of the Court by the litigant is akin not to come with clean hands before the Court. Taking into consideration of totality of facts of this case, this petition is wholly misconceived. The petitioner has made all attempts to abuse the process of the Court, firstly, by filing the suit and then by filing this petition.

10. Before parting with the judgement, it is to be stated that if in future, the Court finds that the Officers of the Transport Department are not acting in the interest of the State Government by not taking timely and immediate steps to recover the tax dues by seizing and auction of the vehicle, the Court will take serious view of the matter and may constrain to give direction to the disciplinary authority for holding the departmental enquiries for major penalties against the erring and defaulting Officers. Head of the department of the Transport Department is directed to issue necessary circular to all his officers to bring this judgement to their notice.

11. In the result, this Special Civil Application fails and the same is dismissed. Rule discharged. It is a fit case where exemplary costs is to be awarded in favour of the State of Gujarat. The petitioner is directed to pay Rs.5,000/- as the costs of this petition to the State of Gujarat. The petitioner to pay this costs to the State of Gujarat within a period of one month from the date of receipt of writ or certified copy of this order whichever is earlier. Receipt of the payment of the costs be filed on the record of this case. Office to place this matter in court with the report whether compliance of this order is made by the petitioner or not after three months. Writ of this order be sent to the petitioner also forthwith.

(S.K. Keshote, J.)

(kamlesh)